

WEDNESDAY, JANUARY 16, 2008

Who Shall Guard the Guards?

[I just received this essay from [Mike Vanderboegh](#). It is pasted here as a Guest Editorial complete and unedited except for minor formatting.]

*"Quis Custodiet Ipsos Custodes?" -- **Decimus Iunius Juvenalis**, Juvenal's Satires, 6.347-48.*

Lisa Simpson: *"If you're the police, who will police the police?"*

Homer: *"I dunno, Coast Guard?"*

We've been here before. A Republican administration, mildly allergic to the Second Amendment, is about to give way to a virulently anti-gun Democrat regime. The lying, arrogant and armed bureaucrats of the Bureau of Alcohol, Tobacco and Firearms are eager to curry favor and lick the boots of their incoming masters. The last time this led to Waco and the deaths of 85 innocent people. This time I fear it will lead to something worse.

David Olofson is not a household name, even in the community of gun rights activists. He should be. While gunnies have been worried about the Bush administration's petty treasons to the Second Amendment in the matters of the Heller D.C. gun ban case and the appointment of the new anti-gun director of the ATF, **Michael J. Sullivan**, the decision in the case of *US v. Olofson* in the United States District Court for the Eastern District of Wisconsin has escaped much attention. Forget Heller. It is, in the grand scheme of things unimportant, trumped as it is by endemic government misconduct. Whether the Supreme Court decides this summer if we are citizens or serfs is immaterial if the abuses of power, constitutional rule of law and even common sense which are evident in the Olofson case are left to stand unchallenged.

"A government is a body of people, usually, notably ungoverned."

-- *Shepherd Book, Firefly, Episode Nine, "War Stories," 2002.*

Len Savage, firearms expert and owner of Historic Arms testified at the Olofson trial. Here is his rendition of the facts of the case:

*Mr. Olofson, a Drill Instructor in the National Guard, was asked by **Robert Kiernicki** to teach him how to shoot a firearm. Olofson did and from time to time would let Mr. Kiernicki borrow his oldest AR-15, go to a public range and target practice. . . (O)n his third time at the range after 120 rounds down range the rifle sputtered three times and jammed. The Law enforcement on the range swept in... The rifle in question seized now by the ATF; It was sent to Firearm Technology Branch (FTB), the testing Arm of the BATFE. They examined and test fired the rifle; then declared it to be "just a rifle". You would think it would all be resolved at this point, this was merely the beginning. The Special Agent in Charge **Jody Keeku** asked FTB to re-test the firearm and this time use soft primed commercial ammunition.*

FTB has no standardized testing procedures, in fact it has no written procedures at all for testing firearms. They had no standard to stick to, and gleefully tried again. The results this time... "a Machinegun". ATF with a self admitted 50% error rate pursued an indictment and Mr. Olofson was charged with "Unlawful transfer of a machinegun". Not possession, not even Robert Kiernicki was charged with possession (who actually possessed the rifle), though the ATF paid Mr. Kiernicki "an undisclosed amount of money" to testify against Mr. Olofson at trial.

At the same time Mr. Olofson was being charged with "Unlawful Transfer" because the rifle malfunctioned and had a M-16 trigger, disconnect, and hammer; calling it an AR-15 with M-16 trigger parts (not the parts that make a machinegun). The ATF removed "a machinegun" from the NFRTR or NFA registry, claiming it was an AR-15 with M-16 parts, therefore NOT "a machinegun". I have the documents, I can prove this. The court was never shown this information. When Mr. Olofson's Attorneys requested the court compel the ATF to provide this and other documents that proved his innocence to the court. The ATF Chief Counsel's Office told the court the documents contained tax information (federal excise tax stamp for \$200) and the court was prohibited from seeing them. All

documents were kept secret from the Honorable **Judge Clevert** and the rest of the court. Even the letter from the ATF to the manufacturer of Mr. Olofson's rifle from 1986, which mandated a "safety recall" due to the rifle going "full auto" if it malfunctioned. ATF Chief Counsel told **AUSA Haanstad**, who then told the court "The Court will have take our word, that the documents in question contain tax information and contain no exculpatory evidence".

It gets even worse... AUSA Haanstad claimed the law does not exempt a malfunction. He claims that it states "any weapon that shoots more than once without manual reloading, per function of the trigger is a machinegun". To clarify when I was on the stand, I asked him "Are you saying if I take my Great Granddaddy's double barrel out and I pull one trigger and both barrels go off, its a machinegun?". He went back to the law (United States Code, Section 5845 (b)), and claims "any weapon that shoots..." Mr. Savage concludes with this observation:

*If your semiautomatic rifle breaks or malfunctions your are now subject to prosecution. That is now a sad FACT. I guess we know now what **Senator Kennedy** meant when he said he looked forward to working with Mike Sullivan on Gun control issues, after his committee approved him for full Senate vote. To those in the sporting culture who have derided "black guns" and so called "assault weapons"; Your double barreled shotgun is now next up to be seized and you could possibly be prosecuted if the ATF can get it to "fire more than once". Hey, but don't worry. The people testing it have no procedures in writing and the testing will be in secret. Also if you know of information that proves YOUR innocence, maybe the ATF won't claim that it's tax information at your trial and prevent YOUR judge from viewing it. Are you next up on the menu?*

(Source: <http://redstradingpost.blogspot.com/2008/01/len-savage-duck-hunters-and-sportsman.html>)

David Olofson was convicted, despite the facts presented by the defense, on the words of a paid informer and an assistant United States prosecutor who refused to release exculpatory "Brady" material (something he is required to do by Supreme Court decision). There is chance that, if Mr. Olofson is finally able to sustain the costs of an appeal, that this egregious case of ATF and Justice Department misconduct will be overturned. But don't bet on it. What you should be certain of is this: We are now going back, if we ever left it, to the time of Waco Rules. You remember what they are, surely? "We are the avenging angels of the ATF, representing the god-on-earth Imperial Federal Government. If you resist us, we will crush you. If you shoot back at us, we and our big brothers of the FBI will kill you -- we will burn down your house, your church, your family and all you hold dear, AND WE WILL NOT BE HELD ACCOUNTABLE." Those my friends, are Waco Rules. They can do anything you can't stop them from doing.

You see, it doesn't matter what the Supreme Court decides if we have bureaucratic criminals enforcing the law to suit themselves and the purposes of their antigun financial masters, the Democrat-controlled Congress. Do you really think that **Harry Reid** and **Nancy Pelosi** will undertake oversight hearings on ATF abuses? President Hillary, perhaps? This is as likely as **George Bush** seriously enforcing the immigration laws. The ATF understands this. You should too.

Sheriff Johnny Behan: "You're under arrest!"

Wyatt Earp: "I don't think I'll let you arrest me today, Johnny."
Tombstone, 1993.

Of course, like everything else, the Olofson case is subject to the immutable Law of Unintended Consequences. A reasonable man, observing the outcome of Olofson's case might conclude that there is no point in an honest fellow playing the game of an abusive regime that flaunts the law and manipulates the courts. A reasonable man might conclude that, if he is approached by ATF agents, he should probably consider them as little better than unconstitutional gangsters operating under the fiction of legal pretense. A reasonable man, realizing the system is rigged against him, that the rule of law has broken down and not wishing to go to federal prison for a crime he did not commit, might decide that the best thing to do is refuse to be the victim, right there and then. And you may infer from that whatever you wish.

The Olofson case confirms that we are still living in the time of Waco Rules, so let's not kid ourselves over the maybes of Heller. Supreme Court decisions don't count for spit in the wind to these people. But if the law no longer protects us, it no longer protects them either. Which is something they probably haven't

considered, but should, given the Law of Unintended Consequences.

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